

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Colin M. Taniguchi,

No. C 06-2409 JL

Plaintiff,

**CASE MANAGEMENT AND PRETRIAL
ORDER**

v.

EMC Mortgage Corporation,

Defendant.

Pursuant to Fed. R. Civ. P. 16 and Civ. L.R. 16-10(b), the following case management and pretrial order is entered:

1. TRIAL DATE

a. Jury trial will begin on May 21, 2007 at 9:30 a.m. in Courtroom F, 15th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102.

b. The length of the trial will be not more than 4 days.

2. DISCOVERY

Fact discovery shall be completed by November 30, 2006.

Expert witness discovery shall be completed by January 30, 2007.

In the event of a discovery dispute the parties shall use the following procedure:

1 Parties shall meet and confer in person, or, if counsel are located outside the Bay
2 Area, by telephone, to attempt to resolve their dispute informally. A mere exchange of
3 letters, telephone calls, or facsimile transmissions does not satisfy the requirement to meet
4 and confer.

5 If, after a good faith effort, the parties have not resolved their dispute, they shall
6 prepare a concise joint statement, of less than three pages, without affidavits or exhibits,
7 stating the nature and status of their dispute. If a joint statement is not possible, each side
8 may submit a one page individual statement. The Court will advise the parties regarding the
9 need, if any, for formal briefing or a hearing.

10 3. MOTIONS

11 All dispositive motions shall be served and filed by January 30, 2007, not less than
12 **thirty-five (35)** days prior to the scheduled hearing date. Any opposition shall be served
13 and filed no later than **twenty-one (21)** days prior to the hearing date. Any reply to the
14 opposition shall be served and filed no later than **fourteen (14)** days prior to the hearing.
15 Prior to a dispositive motion, the parties shall meet and confer and, at the time the motion
16 is filed, submit a joint statement of undisputed facts.

17 4. ALTERNATIVE DISPUTE RESOLUTION (ADR)

18 The Court hereby refers this case for:

19 A settlement conference to be scheduled before another Magistrate Judge of
20 this court within 90 days of the case management conference. Counsel will
21 be contacted by that judge's chambers with a date and time for the
22 conference as soon as is convenient to the judge's calendar.

23
24 5. A further Case Management Conference will be held within 30 days of
25 unsuccessful settlement conference or ADR proceedings. Parties shall jointly propose a
26 date on a Wednesday at 10:30 a.m.

6. PRETRIAL CONFERENCE

a. A final pretrial conference shall be held on April 18, 2007 at 11:00 a.m., in Courtroom F, 15th Floor. Each party shall attend personally or by counsel who will try the case.

b. **Not less than thirty (30) days** prior to the date of the pretrial conference, all counsel or parties shall meet and fulfill the requirements of Civil Local Rule 16-10(b).

c. **Not less than twenty (20) days** prior to the pretrial conference, counsel or parties shall

- (l) serve and file a joint pretrial statement pursuant to Local Rule 16-10 (b);

The pretrial statement shall include the disclosures required by Fed. R. Civ. P. 26(a)(3) as well as the following:

THE ACTION

Substance of the Action

Relief Prayed

FACTUAL BASIS FOR THE ACTION

Undisputed Facts

Disputed Factual Issues

Agreed Statement

Stipulations

DISPUTED LEGAL ISSUES

(List)

TRIAL PREPARATION

Witnesses to be Called

Exhibits, Schedules and Summaries;

Trial

Estimate of Trial Time

Use of Discovery Responses at Trial

Further Discovery or Motions

TRIAL ALTERNATIVES AND OPTIONS

Settlement Discussions

Amendments - Dismissals

Bifurcation, Separate Trial of Issues

MISCELLANEOUS

Any other concerns of the parties

d. At the same time that the parties file their joint pretrial statement they shall also:

(ii) Serve and file trial briefs, which shall specify each cause of action and defense remaining to be tried along with a statement of the applicable legal standard (no opposition shall be filed);

(iii) Serve and file motions *in limine*, which shall be contained in one document. Motions in limine will be decided at the Pretrial Conference.

e. Serve and file a list of excerpts from discovery that will be offered at trial, specifying the witness, page and line references and whether the excerpt is to be offered in lieu of testimony or as impeachment;

f. Serve and file a list of witnesses likely to be called at trial, in person or by deposition, other than solely for impeachment or rebuttal, with a brief statement describing the substance of the testimony to be given;

g. Serve and file a numerical list of exhibits (including demonstrative exhibits that may be admitted into evidence but not those that are purely illustrative), with a brief statement describing the substance and purpose of each exhibit and the name of the sponsoring witness;

h. Exchange exhibits which shall be premarked, tabbed and in binders (plaintiff shall use numbers and defendant shall use letters); and deliver the original and

1 **two** duplicate sets of all premarked exhibits to chambers (exhibits are not to be filed) at
2 least one week before trial.

3 (See Label)

4
5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7

8 Case No. _____
9

10 Exhibit No. _____
11

12 Date entered: _____
13

14 RICHARD W. WIEKING, Clerk

15 By: _____

16 Deputy Clerk

17 j. Serve and file proposed joint voir dire questions and joint jury
18 instructions for cases to be tried by jury (further instructions regarding jury instructions
19 below);

20 k. Serve and file proposed findings of fact and conclusions of law for cases
21 to be tried by the Court.

22 l. Serve and file a proposed verdict form which contains no reference to
23 submitting party.

24 m. **Two courtesy copies** of trial briefs and motions in limine shall be
25 provided.

26 n. No party shall be permitted to call any witness or offer any exhibit in its
27 case in chief that is not disclosed in these pretrial filings without leave of court and for good
28 cause.

1 7. **Not less than nine calendar days** prior to the pretrial conference, counsel or
2 parties shall serve and file any opposition or objection to those items required by section 3
3 (e), (f), (i),(j), (k) and (l) of this order. Additionally, counsel or parties shall file any
4 objections to the qualifications of expert witnesses contained in the opposing party's
5 witness list. Objections not filed as required will be deemed waived. No replies shall be
6 filed. All motions and objections shall be heard at the pretrial conference unless otherwise
7 ordered.

8 8. JURY TRIAL

9 a. Counsel shall submit an **agreed upon set** of additional voir dire
10 questions to be posed by the Court. Any voir dire questions on which counsel cannot
11 agree may be submitted separately. Counsel will be allowed brief follow-up voir dire after
12 the Court's questioning.

13 b. The following jury instructions from the Manual of Model Civil Jury
14 Instructions for the Ninth Circuit (2002 Edition as modified 2003) will be given absent
15 objection: 1.1 - 1.12, 2.1 - 2.6, 3.1 - 3.3, 3.5 - 3.8, 4.1 - 4.6. The Ninth Circuit Manual of
16 Model Civil Jury Instructions is available on the web site for the U.S. District Court for the
17 Northern District of California at www.cand.uscourts.gov. Click on the 9th Circuit home
18 page button on the first screen and then choose the Manual of Model Civil Jury Instructions
19 from the list on the right hand side of the next screen. Counsel shall also submit an agreed
20 upon set of case specific instructions, using the Ninth Circuit Manual of Model Civil Jury
21 Instructions where appropriate. Do not submit duplicates of those listed above. Any
22 instructions to which counsel cannot agree may be submitted separately. Each requested
23 instruction shall be typed in full on a separate page with citations to the authority upon
24 which it is based and a reference to the party submitting it. A **second blind copy** of each
25 instruction and verdict form shall also be submitted omitting the citation to authority and the
26 reference to the submitting party.

9. All documents filed with the Clerk of the Court shall list the civil case number followed by the initials "**JL.**" One copy shall be clearly marked as a **chambers** copy.

The parties shall appear for a further case management conference on April 26 at 10:30 a.m. Counsel shall provide the court with an updated case management conference statement a few days prior to the conference.

IT IS SO ORDERED.

DATED: October 31, 2006

James Larson

James Larson
Chief Magistrate Judge